COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Global NAP, Inc.'s Adoption of the Interconnection Agreement Between Global NAPs, Inc. and Verizon Rhode Island Pursuant to the BA/GTE Merger Conditions	)	D.T.E. 02-21

RESPONSE OF VERIZON MASSACHUSETTS

Verizon Massachusetts ("Verizon MA") submits this response to GNAPs' Petition for Reconsideration filed with the Department on August 30, 2002. In its Petition, GNAPs argues that the Department must reconsider its June 24, 2002 Order issued in this case in light of the federal court's recent decision in *Global NAPs, Inc. v. Department of Telecommunications and Energy*, Consolidated Civil Action Nos. 00-10407-RCL, 00-11513-RCL ("District Court Decision"). GNAPs Petition at 1. GNAPs further contends that as a result of the District Court Decision, the Department is legally required to issue a new decision in this matter "reaffirming that the relevant provision of the Rhode Island Agreement was adopted and adoptable in Massachusetts" and that reciprocal compensation is payable under the agreement during the relevant period (mid-July 2000 through mid-June 2001). *Id.* at 3. GNAPs' Petition is without merit and should be denied.

The District Court Decision provides no cause for the Commission to reconsider its June 24, 2002 Order. Although the Court found that certain of the Department's decisions in DTE Docket No. 97-116 did not comply with federal law, it did so for the limited reason set forth in the Magistrate Judge's Findings and Recommendations of July 5, 2002. The infirmity which the Magistrate Judge found in these rulings was that the

Department did not consider "whether, pursuant to Massachusetts law and other equitable and legal principles, the parties contracted in their interconnection agreements for reciprocal compensation for calls bound for ISPs." Magistrate Findings and Recommendations at 27. In other words, the Magistrate and the District Court concluded that the Department had not interpreted the language of the specific interconnection agreements addressed in that proceeding.

While Verizon MA and the Department have expressed their disagreement with the conclusion of the Magistrate Judge and the District Court on this point, the Department's June 24, 2002 Order clearly did not suffer from the referenced infirmity. To the contrary, the June 24, 2002 Order addressed an entirely different agreement—the Rhode Island Agreement—and was based on the Department's review and interpretation of the specific language of that agreement. D.T.E. 02-21 (June 24, 2002), at 13-15. Based on that review, the Department held that the parties had agreed that the FCC's determination in its CCB/CPD 97-30 proceeding (*i.e.*, the proceeding that resulted in the FCC's Internet Traffic Order) or the decision of a Court of competent jurisdiction, "would provide 'resolution of the issue' whether ISP-bound traffic was to be compensated as local traffic under the agreement." *Id.* at 14-15. The Department determined that the FCC's *Internet Traffic Order* resolved the parties' dispute in February 1999. *Id.* at 15-16. The Department therefore held that Section 5.7.2.3 of the Rhode Island Agreement "must be interpreted to deny recovery of reciprocal compensation payments for ISP-bound traffic post-Internet Traffic Order." *Id.* at 17.

Although the June 24, 2002 Order also made reference to its rulings in DTE Docket No. 97-116, it rested squarely on the language of the specific interconnection

agreement at issue here, which stated that the FCC's decision in the *Internet Traffic Order* would control whether ISP-bound traffic would be compensated as though it were local traffic. It is clear that the Department referenced its earlier decisions solely for the propositions that (1) they found that the *Internet Traffic Order* had determined that ISP-traffic was non-local, interstate traffic; and (2) that such a determination was consistent with the Department policy finding that payment of reciprocal compensation for ISP-bound traffic is contrary to public policy. *See* Order, D.T.E. 97-116-C (May 1999), at 32-39. Nothing in the District Court Decision purports to alter the Department's finding regarding the resolution of the issue in the *Internet Traffic Order* or its policy determinations. Accordingly, there is no basis to GNAPs' claim that the District Court decision undercuts the basis for the June 24, 2002 Order. Therefore, the Department should dismiss GNAPs' Petition.

Even if the Department were to re-examine its decision – and it should not – nothing in the District Court Decision requires the Department to conclude that section 5.7.2.3 of the Rhode Island Agreement entitles GNAPs to receive reciprocal compensation for ISP-bound traffic pursuant to that agreement. As noted above, the District Court Decision did not affect the Department's interpretation of the FCC *Internet Traffic Order* or its policy determination. Indeed, the District Court did not interpret the interconnection agreements before it or offer any policy conclusions of its own. The Court simply remanded those cases to the Department "for proceedings or deliberations not inconsistent" with the Court's ruling and the relevant portions of the magistrate's findings and recommendations. District Court Decision at 3. The choice of the precise procedural steps to be followed in addressing the District Court Decision now rests

squarely with the Department. It is clear, however, that the District Court Decision does not compel any particular result on remand — indeed, the Magistrate Judge and District Court explicitly recognized that, in interpreting the agreements in light of Massachusetts contract law, "the DTE is not required to reach the same result it reached in the [October 1998 Order]," Magistrate Findings and Recommendations at 26. Therefore, should the Department determine that reconsideration is appropriate, it should reaffirm its conclusion in its June 24, 2002 Order that the Rhode Island Agreement does not entitle GNAPs to reciprocal compensation for ISP-bound traffic after the issuance of the *Internet Traffic Order*. June 24, 2002 Order at 17.

For all of the foregoing reasons the Department should deny GNAPs' Petition for Reconsideration.

Respectfully submitted,

VERIZON NEW ENGLAND INC.,
d/b/a VERIZON MASSACHUSETTS

By its attorneys,

/s/Keefe B. Clemons
Bruce P. Beausejour
Keefe B. Clemons
185 Franklin Street, 13th Floor
Boston, Massachusetts 02110-1585
(617) 743-6744

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